Supreme Court, D.C.
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No. 96-480

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

RICHARD D. JENKINS,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

On Petition For Writ Of Certiorari to the
United States Court of Appeals
for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

RICHARD D. JENKINS
pro se
330 N. Canterbury Rd.
Canterbury, CT 06331
(860) 546-9194

55 pp

QUESTION PRESENTED

In direct conflict with decisions of other U.S. Courts of Appeals, the Supreme Court and the U.S. Constitution, was the decision of the Second Circuit to grant summary denial of petitioner's petition for review, on the Board's motion and deny petitioner's motion for reconsideration, although supported with newly acquired conclusive material evidence, a violation of petitioner's constitutional right to due process of law under the fourteenth amendment? And were petitioner's rights to due process of law and equal protection of the law violated by the NLRB through the General Counsel's refusal to recognize petitioner as a "charging party to the proceeding", and to grant petitioner the rights enjoyed by other "charging parties".

PARTIES TO PROCEEDING

John D. Burgoyne, esq.
Assistant General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570
(202) 273-2965

Jeffrey Freund, esq.
Amalgamated Transit Union
Bredhoff & Kaiser
1000 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 833-9340

Rosemary Collyer, esq.
Former General Counsel, NLRB
Greyhound Lines, Inc.
Crowell & Moring
1001 Pennsylvania Ave. N.W.
Washington, D.C. 2004-2595

Rule 29.6 Wholly-Owned Subsidiaries:

Companies owned by Greyhound Lines, Inc.:

Vermont Transit Bus Lines
Texas - New Mexico Bus Lines
and probably others

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Petitioner, Richard D. Jenkins, respectfully prays that a writ of ceriorari issue to review the judgement and opinion of the United States Court of Appeals for the Second Circuit in this case. The issue is whether the Lower Court had jurisdiction to hear my case and whether my rights to "due process of law" have been abridged, due to the actions of the Board and the refusal of the Court to hear my case. The National Labor Relations Board ("Board") has taken the position that I was not a "party to the proceeding", that my case was different than the one before the Court. The Court has accepted the Board's position, even though petitioner has produced conclusive material evidence which demonstrates petitioner's "party status". The Court has failed to scrutinize the Board's claim by requiring the Board to follow Rule 16 of the Federal Rules of Appellate Procedure and provide the Court with the "record on review" which evidences the order sought to be reviewed, the findings on which it is based, and the pleadings, evidence and proceedings to review the Board's order. The Board does not wish to have the aforementioned information disclosed due to the unethical way in which the Board conducted its investigation and decision making process.

OPINION BELOW

The Order of the National Labor Relations Board, "Order Denying Motion For Reconsideration", dated June 9, 1995 is reprinted in Appendix "C".

The Order of the U.S. Court of Appeals, Second Circuit, granting the NLRB "summary denial of my petition for review", dated August 8, 1995, is referenced in Appendix "D".

The Order of the U.S. Court of Appeals, Second Circuit, denying my "motion for reconsideration", dated September 18, 1995, is referenced in Appendix "D".

The Order of the U.S. Court of Appeals, Second Circuit, denying my "motion for reconsideration", dated June 24, 1996, is referenced in Appendix "D".

JURISDICTION

The opinion of the court of appeals, on rehearing/reconsideration, was entered on June 24, 1996. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1). Under Rule 60(b) of the Federal Rules of Civil Procedure, petitioner properly filed, within the time limits of one (1) year after the order, a motion for rehearing/reconsideration based upon newly discovered evidence which by due diligence could not have been discovered in time for a new trial under Rule 59(b)(3).

STATUTORY PROVISIONS INVOLVED

Section 7 of the National Labor Relations Act, 29 U.S.C. Section 157 which provides in part:

> Employees shall have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing...

Section 8(b) of the Act provides in part:

> It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7.

REPRESENTATIVES AND ELECTIONS - Section 9(a) of the Act states in part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

Labor-Management Reporting and Disclosure Act of 1959, As Amended, (29 U.S.C. 411) Bill of Rights, Section 101, (a)(1) Equal Rights.

> Every member of a labor organization have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

The Constitution of the United States of America:

Article I,

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article II,

> The executive Power shall be vested in a President of the United States of America.

Sec. 2 [2]:

> He shall have the power...to appoint Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Article III,

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The point I am making here is that the three (3) Branches of Government are defined as being separate and apart from each other and are therefore supposed to act like a check and balance to ensure that our Government doesn't become corrupt.

Amendment XIV to the U.S. Constitution, Section 1 states in part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

The present case originated as a result of a Greyhound strike, which commenced on March 2, 1990, and my personal legal involvement began in April of 1993 when the tentative Settlement Agreement ("S.A.") was announced. I have been contesting the process by which it was negotiated and ratified from day one of its inception. On may 7, 1993, I filed charges with the NLRB against the Amalgamated Transit Union ("ATU") under section 7 of the Act as the ATU's International President negotiated the "S.A." in lieu of our exclusive chosen representitives and then the ATU excluded eight-thousand (8,000) out of nine-thousand (9,000) bargaining unit employees from voting on the agreement. (Pertinent language of the charges is reprinted in Appendix "A".)

The Board has yet to do anything about the charges I filed as they have been pending before the Board for three years and four months. Some two-hundred other bargaining unit employees have filed similar charges and many of their cases are also pending. I requested injunctive relief under section 10 (j) of the Act on May 12, 1993 and never received a response from the Board. On July 8, 1993, I wrote more than forty (40) objections to the "S.A." and mailed them to the Administrative Law Judge (ALJ) who was supposedly going to objectively consider some three-hundred member's objections. Greyhound, the ATU and Counsel for General Counsel were supposed to answer our objections in a timely manner, which none of them did. On August 8, 1994, I wrote a letter to the ALJ calling time-limits on Greyhound's, the ATU's and Counsel for General Counsel's written responses. The ALJ did not respond to our written objections.

On August 16, 1994, I attended a hearing in Milwaukee, WI, at Region 30 of the NLRB as did other ATU members of which I and three others testified. I testified first, but just before I was called, the ALJ called for a recess and directed the attorney's for Greyhound, the ATU, and the Board to step out into the hall for a discussion, obviously something he didn't want to share with the membership who comprised the remaining individuals in the hearing room. When the hearing resumed, I contested Greyhound's, the ATU's and Board's late answers to our written objections to the "S.A." My position was, and still is, that only our objections and not their responses should be considered. Greyhound and the ATU had filed a joint answer and the Board's was separate, however, it baffles me that out of all of those objections, not even one was found to have any merit and the ALJ did not consider any of our objections in his written decision, but only looked for invalid reasons for rejecting them./1

My testimony continued, contesting the legality of negotiations and ratification of the "S.A." With regard to Representation in contract negotiations, I cited sections 23 and 24 of the International's Constitution and General Laws which explicitely defines the duties of the "Joint Council" as the exclusive bargaining agent of the affiliated local unions and "Representation" which clearly defined our chosen Joint Council

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1/ A copy of the ALJ's decision is not contained herein as it is very lengthy.

representatives as:

> the member's exclusive representative for the purpose of collective bargaining as to wages, hours, working conditions, pensions, union security, and check-off, and other conditions of employment and for negotiation and execution of contracts with employers pertaining to such matters.

(see Appendix "E" for a partial reproduction of both sections). I also discussed the discriminating practice the International instituted in allowing only a handful of the members of the bargaining unit to vote by misquoting section 19.9 of the International's Constitution and General Laws. In a letter to the membership dated May 10, 1993, the International President ("IP") gave unethical and illegal reasons why he disqualified so many members from the ratification process. The last five lines of page one of his letter states:

> Those who had taken a withdrawl card and transferred to another local union representing another employer or to member-at-large or who had otherwise secured permanent employment elsewhere (Section 19.9) were never deemed eligible to receive a ratification ballot.

(see Appendix "F" for a full reproduction of the letter) Section 19.9 has to do with our "Defense Fund" which provides strike benefits, not voting rights. Here's section 19.9: Other Permanent Employment.

> Should any member of a L.U. (local union), while on strike or lockout, secure permanent

> employment and remain at the same over seven (7) days, such member shall not be entitled to strike or lockout benefits and shall not be restored to the payroll without approval of the G.E.B. (General Executive Board).

On page two of that letter he contradicts himself by allowing members-at-large to vote even though he stated on page one that they weren't deemed eligible and our Constitution specifically prohibits it in section 21.14, Others Leaving Active Service, where it states:

> As M.A.L.s, they will have no voice or vote on any matters affecting the L.U. or I.U. (International Union) including election of officers and labor contract or pension matters.

Section 20.3 of our Constitution and General Laws insures our right to vote on company propositions through a "Referendum Vote. (see Appendix "F" for a reprint)

The next member to speak was Kenneth Benner who described the "S.A." as a discrace to labor, among other things and the RICO suit (Racketeer Influenced Corrupt Organization Lawsuit) that Greyhound filed against the union as "Blackmail"./2

2/ The RICO suit Greyhound filed against the union had no basis of fact, however, it brought the ATU to its knees with legal expenses and was used by Greyhound as a bargaining chip to contract negotiations. (eg. if the S.A. got approved, Greyhound would drop the RICO suit).

Howard Brown, Jr. contested Greyhound's refusal, as well as the ATU and Board's refusal, to allow him to be present, testify and examine witnesses at his arbitration, dismissal hearing. His appeal was denied.

Ralph Schlieve testified that he and others, who retired during the strike, should be permitted to return to work, as prior to the strike a retiree was permitted to return if he/she repaid retirement benefits received, back into the trust. His appeal was denied.

The following month, the ALJ rendered his decision and approved the S.A. He supposedly used a rubric of four (4) factors cited in Independent Stave Company, Inc., 287 NLRB No. 76 (1987) as a guideline in determining whether the S.A. was acceptable. (see Appendix "B". Number three (3) was of most concern to me as it states, "whether there has been fraud, coercion, or duress by any of the parties in reaching the settlement:" Fraud and coercion abounded throughout negotiations and ratification of the S.A. I produced ample material evidence throughout the prodceedings to support my position (eg. my initial charges against the union accompanied with a sworn affidavit, my written objections to the S.A., verbally before the ALJ at the hearing in Milwaukee, WI, throughout my written appeal 'cross-exception' [29 single spaced pages to the Board], in briefs and reply briefs to the Board in response to the ATU's, Greyhound's and the Counsel for General Counsel's objections, and in briefs before the U.S. Court of Appeals).

Due to the voluminous quantities of materials just referenced, petitioner will not be able to produce each item referenced for to do so would take a great deal of time to reprint the materials in a booklet of size the

Court requires. I shall, upon request, produce any reference cited if the Court wishes, but please allow for ample time to reproduce it.

REASONS FOR GRANTING THIS PETITION

I. THE U.S. COURT OF APPEALS, SECOND CIRCUIT, HAS ADOPTED CONFLICTING STANDARDS WHICH ARE NOT IN CONFORMANCE WITH OTHER LOWER COURTS, THIS COURT OR EVEN WITH ITS OWN PREVIOUS DECISIONS.

SUMMARY JUDGEMENT

When a dispute of material fact exists, a court should not grant a motion for summary judgement.

> Affidavits made on personal knowledge are probative on a motion for summary judgement to demonstrate the existence or absence of a dispute issue of material fact.

See Schneider v. OG & C Corp., 684 F. Supp. 1269, 1274 (S.D.N.Y. 1988).

In Herman v. Provident Mutual Life Ins. Co, 886 F.2d 529, 536 (2d Cir. 1989) the court improperly granted summary judgement on genuine factual issues presented by contradictory affidavits and deposition testimony, (cert. denied 493 U.S. 1076, 1990).

In Jaroslawicz v. Seedman, 528 F.2d 727, 731 (2d Cir, 1975):

> The responsibility of the district judge on a motion for summary judgement is merely to determine whether there are issues to be tried, rather than to try the issues himself via affidavits.

In the present case, the U.S. Court of Appeals granted the Board a motion for summary judgement of my petition for review. The material facts presented in the case called for a trial.

FAIR REPRESENTATION

Sections 7 and 9(a) of the NLRA gives the union member the right to have a representative of his or her own choosing negotiate the terms of a contract. Section 8(b)(1) prohibits an International President from interfering with local union representatives, actually taking charge in our case, as it has the effect of "inhibiting the process of discussion thus casting a mind against reaching ageement" (see NLRB v. Katz, 369 U.S. 736, 747, 8L. Ed 2d 230, 82 S. ct. 1107 (1962). In our case, it has prevented us from reaching an agreement acceptable to the membership.

In NLRB v. United Paper Workers International Union, 965, F.2d 1401; 1992 U.S. App. LEXIS 12601; 140 L.R.R.M. 2788, the U.S. Court of Appeals for the Sixth Circuit decided that intervention by the International President was an effort on his part to expand the bargaining power beyond the appropriate bargaining unit.

UNION'S CONSTITUTION AND BY-LAWS CONSTITUTES A CONTRACT

The Union's Constitution and by-laws defines a relationship betwen a parent union and its members. It is customary for an International organization to require that members conform to the conditions and terms of the Constitution, however, just as the

U.S. Constitution provides guidelines with which citizens and government live and work together, so does the Union's Constitution and has been defined in the case NLRB V. Allis-Chalmers Mfg. Co.; 338 U.S. 175, 192, 18L. Ed. 2d 1123, 87 S. ct 2001 (1967) and Local 248 UAW v. Natzke, 36 Wis. 2d 237, 153 N.W. 2d 602, 608 (Wis. 1967), as a "contract" between the labor union and its members. My understanding of a contract is that both parties must abide by its provisions. In the present case, our International President has placed himself above our union's Constitution and has repeatedly violated its provisions by depriving us of the right to fair representation and our right to control our destiy through collective bargaining and the right to vote.

EQUAL VOTING RIGHTS

The Labor Management Reporting and Disclosure Act (LMRDA) Section 101(a)(1) insures a union member that he/she will be treated the same as any other member of the union when it comes to voting for representatives for union office, contracts and other isssues involving union affairs.

When a union's Constitution requires that a contract be ratified, such as ours does, then a ratification vote must be taken. (see Merk v. Jewell Food Stores, 138 L.R.R.M. 2433, U.S. ct. of app. (7th cir., 1991) When voting takes place, all members must be treated equally as required by sec. 101(a)(1) of the LMRDA.

This was not the case for us and the rules in our Constitution were not equally and equitably applied. Ninety percent (90%) of the members in the bargaining unit were unjustly denied their right to vote. (see

John E. Parks, Jr., et al v. International Brotherhood of Electrical Workers, 203 F. Supp. 288; 49 L.R.R.M. 2911; 49 L.R.R.M. 3157; 44 Lab. Cas. (CCH) P17, 546; 44 Lab. Cas. (CCH) P17, 571; whereby it is the opinion that when a particular sanction is clearly permitted by the Constitution of a Union, the courts should be slow in substituting their judgement, however, if a particular sanction is clearly unreasonable under all circumstances and unjust to individual members of the offending union, the courts should not hesitate to exercise whatever jurisdiction they may have to correct the injustice.

DUE PROCESS OF LAW

The fourteenth amendment to the U.S. Constitution guarantees every citizen the right to due process of law. However, I and my fellow union members have been experiencing grave difficulty in achieving this goal. With regard to Greyhound, the ATU, the NLRB and more recently, the U.S. Court of Appeals, Second Circuit, I don't feel that any of them think that our rights actually exist. It has been as though all of their efforts have been to circumvent them.

In Ford v. Wainwright, 477 U.S. 399; 106 S. ct. 2595; 1986 U.S. Lexis 64; 91 L. Ed 2d 335; 54 U.S.L.W. 4799; an individual's right to due process of law does exist. Justice O'Conner stated in his opinion:

> If there is one 'fundamental requisite' of due process, it is that every individual is entitled an opportunity to be heard.

The NLRB has thwarted every effort I've made to contest the S.A. In an opinion

written by a justice of the Supreme Court, sixty (60) years ago, Justice Pitney defines the problem and presents a reasonable solution. (see St. Joseph Stockyards Co. v. United States et al., No 497, Supreme Court of the United States, 298 U.S. 38; 56 S. ct. 720; 1936 U.S. Lexis 973; 802 Ed. 1033. Justice Pitney so states:

> Legislation declaration or finding is necessarily subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the constitution as the Supreme Law of the land may be maintained. Nor can the legislature escape the constitutional limitation by authorizing its agent to make findings that the agent has kept with that limitation. Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be conclusive where constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority.

The constitutional safeguard of judicial review is no more apparently

needed than in the present case before this court.

II. THE U.S. COURT OF APPEALS, SECOND CIRCUIT, HAS REFUSED TO CONSIDER NEWLY DISCOVERED CONCLUSIVE MATERIAL EVIDENCE WHICH DEMONSTRATES MY PARTY STATUS BEFORE THE BOARD.

A. LETTER FROM THE GENERAL COUNSEL OF THE NLRB ADDRESSED TO ME

Asistant General Counsel of the NLRB argued before the Court that I was not a party to the proceeding. That my case was against the Union and that the case before the Court was against Greyhound. On August 22, 1995, I investigated this argument by requesting, under the Freedom of Information Act, a list of all cases related to the Greyhound Strike. Specifically all cases included in 30-CA-10681-2, 30-CA-10960, et al, which were the numbers appearing on my "petition for review" before the U.S. Court of Appeals. General Counsel at first tried to conceal my case among some eight-hundred and seventy-three (873) cases in two computer printouts. Over six-hundred (600) of the cases were obviously not related to the strike or in any way involving Greyhound Lines, Inc. I appealed to the General Counsel and made it clear that I would not stand for any more of his deliberate efforts to keep this information from me. I then received a letter from the General Counsel, dated October 26, 1995 which contained conclusive evidence of my party status as my charge is referenced, along with other charges against Greyhound and the Union, which make-up 30-CA-10681-2 and 30-CA-0960. (see appendix "G" for reprint of entire

letter) My case appears on page 5 of document "B". Please take note that on page one (1) of this letter, the reference is to cases against Greyhound and the (Amalgamated Transit Union). Therefore, the case before the Court was not only against Greyhound, but also the ATU.

Hybrid Claim

Even if the case before the Court was only against Greyhound, the case would also include the Union because the crux of the case is the settlement agreement which both parties share in common. To imply one without the other is not possible as a contract is a shared agreement. To suggest that one does not exist would indicate that there was no S.A., as neither the Company nor the Union could be engaged in a contract alone. [see Abdelmesih v. Waldorff-Astoria, 93 Civ. 4921 (CSH), United States District Court for the Southern District of New York, 1995, U.S. Dist. LEXIS 6407,149 L.R.R.M. 2937, U.S.D.J.] Charles Haight,Jr. states:

> The law is clear that regardless of who is named as defendant, a hybrid claim is presented if an employee has a cause of action against both the employer and the union, where the two claims are inextricably linked, and where the case to be proved is the same against both.

Both the Union and Greyhound were inextricably linked in the negotiation of the S.A. Ratification was part of the rejection or approval of the S.A. and therefore concerned both the Union and the Company.

B. LETTER FROM THE GENERAL COUNSEL OF THE NLRB ADDRESSED TO REPRESENTATIVE NANCY PELOSI

General Counsel of the NLRB, in his own hand, acknowledged to Representative Pelosi that I was one of the individual "Charging Parties" and that I filed exceptions with the Board to Judge Giannasi's approval of the settlement agreement (page 2, paragraph 2).

He then goes on to say, "Mr. Jenkins then requested that the United States Court of Appeals for the Second Circuit review the Board's order." Mr. Feinstein then makes an erroneous statement when he says, "The Court affirmed the Board's order." The Court has not affirmed the Board's order as my case has yet to be considered. In paragraph four (4) on page two (2), he makes reference to me again by stating, "...the Supreme Court has denied the Charging Party's writ." In the last paragraph on page two (2) General Counsel states, "Although I regret the amount of time it has taken to reach this final stage of the proceedings, the appeals to the Board and the courts were within the parties' rights to exercise."

He again refers to me as a 'party' and that my charges were part of the proceedings and that the appeals to the Board and the Courts were within my rights to exercise. (see apendix "H" for a complete reprint of this letter.

III. THE BOARD IS PROTECTING THE SETTLEMENT AGREEMENT FROM JUDICIAL REVIEW

General Counsel of the NLRB has overzealously exercised his power to prevent judicial review of the Board's Order to accept the S.A. by refusing to file complaint on

any charges contesting it. Justice Pitney was concerned about an agency's findings of fact as being conclusive and the effect it could have on one's constitutional rights and that a person wouldn't be able to contest a wrongful agency decision through the safeguard of judicial review. This is exactly what's happening in my case right now. The NLRB's procedure for refusing to file complaint in order to prevent judicial review of a charge contesting the S.A., or any other charge, is unconstitutional. My rights to "due process of law" under the 14th Amendment, as well as equal protection under the law, have been violated in that the General Counsel has processed only those charges he felt supported his position and has ignored (set aside) charges that would have challenged his position. By giving preferential treatment to Greyhound and the Union, General Counsel has violated the employees' rights.

CONFLICT OF INTEREST

The NLRB is involved in a conflict of interest due to the fact that Greyhound's leading attorney, Rosemary Collyer, served as General Counsel of the National Labor Relations Board for four and one-half ($4\frac{1}{2}$) years just prior to Greyhound's contract negotiations, that is from october 16, 1984 until April 4, 1989. Sometime between April of 1989 and November of 1989, Greyhound hired her to lead contract negotiations.

My experiences with the General Counsel of the NLRB for the past three and one-half years have been as though I've been dealing directly with Greyhound. I'm sure that the Court would agree that most attorneys would disqualify themselves under such circumstances, however, Greyhound planned it that way and

she was just the right ticket for building an alliance with the NLRB and getting what they want. This is what Justice Pitney was refering to when he stated in his written opinion, "Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands." Only, this particular set-up was deliberately arranged by Greyhound.

Under the present circumstances, the union member doesn't have any hope of successfully contesting this gross injustice. The General Counsel of the NLRB has tied-up all of our charges and judicial review of the Board's Order will be circumvented unless this Court rules that I have the right to be heard as a "charging party" and that the merits of my charges should be considered through the process of judicial review.

CONCLUSION

The facts and material evidence presented in this WRIT demonstrates:

a. that petitioner's rights to due process of law and equal protection of the law, have been violated.

b. that petitioner was a "charging party to the proceeding".

c. that the NLRB failed to treat petitioner fairly throughout the appeal process.

d. that petitioner's charges have merit and that the Board's actions to prevent petitioner's complaint from being considered both before the Board and the U.S. Court of Appeals, was unconstitutional.

e. that Greyhound built an unethical alliance with the General Counsel of the NLRB by hiring former General Counsel, Rosemary Collyer.

f. that the International President of the ATU violated the National Labor Relations Act (NLRA) and the Union's by-laws by taking charge of contract negotiations in lieu of our chosen representatives.

g. that the International President of the ATU violated the LMRDA and the Union's by-laws when he disqualified bargaining unit employees from voting on the S.A.

h. that "separation of powers" guaranteed by Articles I, II, & III of the U.S. Constitution, have been ignored by the U.S. Court of Appeals for the Second Circuit, as the Court failed to consider conclusive material evidence which demonstrated my "party status".

I. that fraud and coercion were part of the negotiation and ratification process in reaching the S.A.

j. that the U.S. Court of Appeals failed to consider previous rulings of other Appellant Courts and the U.S. Supreme Court.

k. that Justice Pitney recognized (60 years ago) the problem which exists when judicial review is circumvented. The door for corruption would be swung wide open, such as in our case.

l. that the Union and Greyhound were inextricably linked in the negotiation of the S.A. Therefore, a case against one would be a case against both. (a hybrid claim)

m. that the information I discovered under the Freedom of Information Act and the letter that General Counsel sent to Representative Pelosi evidenced my "party status" before the Board.

n. that the General Counsel has been trying to prevent the Board's Order, to accept the S.A., from judicial review.

o. that the General Counsel of the NLRB has willfully allowed section 9(a) of the Act to be violated and has deprived me and others of our right to due process of law and equal protection of the law.

This Court is our only hope of justice and an inroad to protection of our constitutional rights. On behalf of myself and the entire group of ATU members who have suffered this grave injustice, we pray that this Court grants this petition for writ of certiorari.

Respectfully submitted,

Richard D. Jenkins

Richard D. Jenkins
pro se
330 N. Canterbury Rd.
Canterbury, CT 06331
(860) 546-9194

APPENDIX A

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION

case 34-CB-1686

Date filed: May 7, 1993

LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

James LaSalla, President
AMALGAMATED TRANSIT UNION

Statement of the facts: Since on or about April 20, 1993, the above named labor organization, by its officers, agents and representatives has breached its duty of fair representation to employees of Greyhound Lines, Inc. by:

1. the president of the International Union negotiating a collective bargaining agreement without proper authority; and

2. excluding unit employees who are members in good standing of the Union from voting on the contract.

By these and other acts, the above named labor organization has restrained and coerced the employees of Greyhound Lines, Inc. in the exercise of the rights guaranteed in Section 7 of the Act.

APPENDIX B

Independent Stave Company, Inc. and James A. Holt and Charles William Moore and James O. Railey, Jr. and James Edward Turner. Cases 9-CA-19619-1, 9-CA-19619-2, 9-CA-19619-3, and 9-CA-19619-4.

16 December 1987

DECISION AND ORDER

By Chairman Dotson and Members Johansen, Babson, Stephens, and Cracraft

Four rules the ALJ considered in his decision to accept the Settlement Agreement:

1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement; 2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; 3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and 4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

APPENDIX C

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Greyhound Lines, Inc.

and Cases 30-CA-10681-2
30-CA-10960, et al

Amalgamated Council of
Greyhound Local Unions
affiliated with Amalgamated
Transit Union, AFL-CIO, CLC

ORDER DENYING MOTIONS FOR RECONSIDERATION

On September 22, 1994, ALJ Robert Gianasi issued a Decision in this case in which he recommended, inter alia, that the Board approve the partial settlement agreement and that the relevant complaint allegations covered by the settlement agreement be dismissed. On January 18, 1995, the General Counsel, the Respondent, and the Charging Party (ATU) filed a Joint Motion to Sever Review of the Partial Settlement and review of unfair labor practice findings/1 and joint motion for oral presentation on settlement. On February 24, 1995 the NLRB issued an order granting the parties joint motion

1/ The judge found that the Respondent violated sec. 8(a)(5), (3) and (1) of the Act by insisting on its experienced based seniority (EBS) proposal during bargaining and by later implementing that proposal. Review of the judges findings of these violations is currently pending before the Board and those findings are not at issue here.

to sever and approving the partial settlement agrement.

On Feb. 27, 1995, Richard D. Jenkins, an individual, filed an Appeal to the ALJ's decision, with attachments. On March 27, 1995, Kenneth Benner, an individual, filed an Appeal to the ALJ's opinion, with attachments, and on April 6, 1995, he filed an amendment to his appeal, with attachments (we deny the General Counsel's request that the Board reject the attachments included with Jenkins' and Benner's appeals) Thereafter, the respondent and the charging party filed a joint brief in response to these appeals and the General Counsel also filed a reponse. Finally, Jenkins and Benner filed replies to these responses. (In his reply brief filed May 2, 1995, Jenkins belatedly moved to intervene in this case. We deny that motion as untimely.) Because Jenkins and Benner filed their appeals to the judges decision after we issued our order approving the partial settlement agreement, we will treat their appeals as timely filed motions for reconsideration of our order. The NLRB has delegated its authority in this proceeding to a three-member panel. The issues presented here are whether Jenkins and Benner have standing to file motions for reconsideration in this case and if so, whether the arguments set out in their motions raise issues that would warrant reconsideration of our February 24, 1995 order. For the reasons set out below, we find Jenkins and Benner lack standing to participate in this case and are not entitled to file motions

for reconsideration. Morever, assuming arguendo that they did have standing, we would find that they have failed to present any evidence that might warrant reconsideration of our order.

As to the first issue, whether Jenkins and Benner have standing, Section 102.48(d)(1) of the Board's Rules and Regulations specifically provides that a party to a proceeding before the Board may move for reconsideration after the Board has issued its decision or order (Section 102.48(d)(1) states, in relevant part:

> (a)party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on.

Neither Jenkins or Benner separately filed charges in this proceeding and neither timely sought to intervene. The General Counsel and the charging party represented their interests in this case. Accordingly, neither is a party to this proceeding. Thus, for the reasons set out in the Board's decision in Lincoln technical institute, we find that neither Jenkins nor Benner, as nonparties in this proceeding, has standing to file a motion for reconsideration. We also find that Jenkins and Benner submission of written objections to the judge and their

testimony before him do not somehow change their status to parties in this proceeding or otherwise entitle them to participate in the case beyond the limited extent prescribed by the judge. In this regard, as the judge explained in his decision, under the Board's decision in Independent Stave, 287 NLRB 740 (1987), the Board considers a number of factors in deciding whether to approve a non-Board settlement agreement. One of these factors is whether the charging party(ies) the respondent(s) and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement (Independent Stave 287 NLRB at 743.) Although neither Jenkins nor Benner is a charging party or a discriminatee, the judge granted them the limited right, along with other employees arguably affected by the partial settlement, to file objections to the partial settlement. For under the terms of the judges May 27, 1994 order approving proceedures for approval of partial settlement agreement, over 5,000 Greyhound employees affected by the partial settlement agreement received notices outlining the terms of the proposed settlement and were notified that they could submit objections to the partial settlement to the judge in writing and that those objections would be considered at a hearing. As the judge himself stated such an offer was unprecedented. Approximately 300 individuals submitted written objections to the judge and four individuals testified befgore him at a special hearing to consider the settlement agreement held on August 16, 1994. Jenkins and Benner were among those who

filed written objections and testified at the August 16 hearing. As the judge explained to the witnesses at the August 16 hearing, "normally employees, particularly employees in such great numbers as are involved in this case, do not get the opportunity to speak to a settlement so I think that this is unusual and is a good proceedure, but there are no ground rules. I just want to hear from you." Although the judge did, indeed, consider all the objections to the partial settlement, including Jenkins and Benner's, in deciding whether to recommend approval of the partial settlement, he did not contemplate, nor do we find now, that his "unprecedented" offer to the over 5,000 affected employees somehow entitled them to participate further in the case or somehow become parties to it. For this reason also, we find that Jenkins and Benner do not have standing to file "Appeals" to the judge's decision, which we have considered here as motions for reconsideration.

However, assuming that Jenkins and Benner did have standing to participate in this case, we would find that they have failed to present any evidence that would warrant reconsideration of our February 24, 1995 order because they have merely repeated arguments previously made to the judge. In this regard, Jenkins contends, as he did in his written objections and in his August 16, 1994 testimony before the judge, that the partial settlement agreement should not be approved because he objects to one of the major terms of the agreement, the new collective-bargaining agreement between the parties. Specifically, Jenkins

contends that there were irregulatities in the negotiation and ratification of the parties' new collective-bargaining agreement. Jenkins also contends, as does Benner, that the terms of the agreement are too favorable to Greyhound. The judge considered and rejected these arguments in reaching his conclusion that the Board should approve the partial settlement agreement. Specifically, the judge found that the ratification procedure was an internal union matter and that the substance of the collective-bargaining agreement was a matter for negotiation by the parties and was not subject to review by the Board. We agreed with the judge's analysis of these issues and therefore adopted his recommendation to approve the partial settlement agreement. Since these motions present no new grounds as to why we should reconsider our order, we would find these motions lacking in merit if they were properly before us.

The Board having duly considered the matter,

IT IS ORDERED that these motions for reconsideration are denied.

Dated, Washington, D.C., June 9, 1995

James M. Stephens, Member

Charles I. Cohen, Member

John C. Truesdale, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET No. 95-4095

NOTICE OF MOTION
FOR
SUMMARY DENIAL OF PETITION
FOR REVIEW

MOTION BY:

John D. Burgoyne
NLRB
1099 14th Street, N.W.
Washington, D.C. 20570
(202) 273-2965

OPPOSING COUNSEL:

Richard D. Jenkins
330 N. Canterbury Rd.
Canterbury, CT 06331
(860) 546-9194

Brief statement of the relief sought:

Summary denial of petition for review of Board orders filed by petitioner Richard D. Jenkins

Before: Hon. Roger J. Miner; Hon. John M. Walker, Jr.; & Hon. Fred I. Parker, CJJ

It is hereby ordered that the motion be and it hereby is granted.

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT
filed August 8, 1995
George Lange III, Clerk

D2

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET No. 95-4095

NOTICE OF MOTION
FOR
REHEARING/RECONSIDERATION

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 18th day of September, one-thousand nine-hundred and ninety-five.

Present:

Hon. Roger J. Miner; Hon. John M. Walker, Jr.; and Hon. Fred I. Parker; Circuit Judges

Richard D. Jenkins,
Petitioner.
v.
NLRB,
Respondent.
Amalgamated Council of Greyhound Local Unions, and Greyhound Lines, Inc., Intervenors.

A motion for reconsideration having been filed herein by petitioner Richard D. Jenkins, upon consideration thereof, it is ordered that said motion be and it hereby is DENIED.

For the Court:

George Lange III, Clerk

United States Court of Appeals, Second Circuit, filed September 18, 1995.

D3

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET No. 95-4095

NOTICE OF MOTION
FOR
REHEARING/RECONSIDERATION

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the twenty-fourth day of June one thousand nine hundred and ninety-six.

Present:

Hon. Roger J. Miner; Hon. John M. Walker, Jr,; and Hon. Fred I. Parker; Circuit Judges,

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95-4095 Jenkins v. NLRB

A motion for Reconsideration having been filed herein by pro se appellant Richard D. Jenkins,
Upon consideration thereof, it is
Ordered that said motion be and it hereby is DENIED.

For the Court:

George Lange III, Clerk

United States Court of Appeals, Second Circuit, filed June 24, 1996.

APPENDIX E

CONSTITUTION AND GENERAL LAWS
AMALGAMATED TRANSIT UNION

Section 23 JOINT COUNCILS:

Where members of the A.T.U. belong to different L.U.'s (local unions) and are employed by the same company, such L.U. shall form Joint Councils for bargaining purposes and for the purpose of taking strike action. In appropriate cases, as decided by the I.P. (international president) and under such arrangements as the I.P. shall determine, such J.C.'s (joint councils) may include labor organizations other than A.T.U. affiliated with such J.C.'s. The Joint Council shall be the exclusive bargaining agent through which the L.U.'s which form said Joint Council must bargain. The Council shall negotiate a single contract which will cover the membership employed on the property of all the L.U.'s which are members of the Joint Council. There shall be no separate counting of the votes by L.U.'s.

Section 24 REPRESENTATION:

The I.U. and the L.U. in which a member holds membership (or where the L.U. in which a member holds membership is affiliated with a Joint Council) shall be the member's exclusive representative for the purpose of collective bargaining as to wages, hours, working conditions, pensions, union security, and check-off, and other conditions of employment and for the negotiation and execution of contracts with employers, pertaining to such matters.

APPENDIX F

AMALGAMATED TRANSIT UNION

May 10, 1993

TO: ALL FORMER AND CURRENT GREYHOUND MEMBERS

Dear Sisters and Brothers:

We are sending this letter to all those whom our records identify as members of one of the 19 Greyhond locals represented by the National Greyhound Council on March 2, 1990, when the Greyhound strike began. Because of the disruptions and turmoil caused by the strike many of you have had to go on to other employment or, for financial or other reasons, have ceased to maintain your membership. Some of you are currently Greyhound employees but have ceased to pay union dues.

Presumably, all of you are now aware at least from press reports, that after many months of frustration, the ATU was finally able, with the active participation of the council's officers and seven of its remaining local presidents, to negotiate a settlement of our three-year old labor dispute with Greyhound.* The ratification ballot on this contract, the contract and return-to-work agreement was mailed out on April 21, 1993, returnable May 7. By a vote of 483 to 368 this contract settlement was approved and is now in effect.

After receiving a number of calls and

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* Petitioner's position is that the previous statement is not true to fact.

letters from those who question why they did not receive a ratification ballot, we thought it best to write this letter to all those affected, explaining the position that we took on voting eligibility in accordance with our laws and previously declared policies.

The starting point in reaching this decision was Section 23 of the Constitution which provides for negotiation of a "single contract which shall cover the membership employed on the property of all the L.U.'s which are members of the Joint Council." Historically, this provision has been applied to permit only those who retained active membership in their locals to vote on the Greyhound contract. Those who had taken withdrawl card and transferred to another local union representing another enployer or to membership-at-large or who had otherwise secured permanent employment elsewhere (Section 19.9) were never deemed eligible to receive a ratification ballot.

In this instance, the voting eligibility list was broadened to include not only those who were active members in good standing in our remaining Greyhound local unions, but also those who had assumed temporary status as members-at-large for the duration of the labor dispute under the terms stated in my letter to all Greyhound locals dated October 20, 1991.* When the issue

* Petitioner's position is that the previous statement is not true to fact.

arose at the time of that letter, it was explained that all those who transferred to at-large status would be allowed to retain their right to participate in any contract ratification vote even though they would no longer be eligible to vote as a local union member.*

It was not our desire to deprive anyone of the rights they enjoyed as an ATU member of Greyhound local union and an employee of Greyhound. While I fully understand other strikers had an interest in the settlement, they were not members in good standing in the ATU or were not members of Greyhound local unions.* It was difficult, it not impossible, to ascertain whether striking Greyhound employees had found other employment or had any desire to return to work at Greyhound. Many had retired from the company during the dispute. Some had obtained other permanent employment and were members of other ATU local unions. Given these circumstances and the lengthy duration of the strike, we believe the decision we made for voting on this settlement was fully consistent with circumstances and with our laws and past policy statements.* Now that the settlement has been ratified, we want to assure all of you that the collective bargaining and return-to-work agreements protect the rights of all strikers, regardless of their current membership status.* The terms of this

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* Petitioner's position is that the previous statement is not true to fact.

settlement include a collective bargaining agreement extending through January 31, 1999, $22 million in back pay distributed from a bankruptcy court escrow fund to all eligible strikers by the NLRB under its custonary standards, and the guaranteed recall of at least 550 strikers in seniority order by location between January 1, 1993, and July 1, 1993. We would urge all those who wish to return to their Greyhound employment who have not already done so to sign the recall list as soon as possible to be eligible for available vacancies.

In closing, we believe this agreement represents an important step toward a new attitude and commitment at the highest levels of both the Company and the Union to achieve a better labor-management relationship that will ultimately ensure quality jobs, better service to the public and a brighter future for all concerned.*

Fraternally,

"S/ _____"
Jim LaSalla
International President

cc All International Officers
All Greyhound Council Officers and
Local Union Presidents

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* Petitioner's position is that the previous statement is not true to fact.

APPENDIX F5

20.3 REFERENDUM VOTE:

In case the International representative who is handling questions in dispute between a L.U. and the employing company has propositions that he or she believes should be considered by the membership, the International representative shall acquaint the membership with such propositions either through a circular carefully outlining and explaining the propositions, or through a general meeting of the L.U. After having acquainted the membership with the proposition or propositions, the International representative shall then have a referendum vote of the membership of the L.U. taken upon the same. If the L.U. has bylaws providing for a referendum vote of its membership, the International representative shall follow such provisions. If the L.U. has no bylaws governing such a vote, the International representative shall then make arrangements and have such votes taken in the best and easiest manner possible--either by appointing a special election day and having the membership come to the hall or headquarters of the L.U. and cast their vote, or through a committee who shall take the vote of the members at the different places of employment. Every member shall be given an opportunity to vote upon said proposition and the majority of the votes cast by the membership of the L.U. shall decide the question.

APPENDIX G

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

October 26, 1995

Mr. Richard D. Jenkins
330 N. Canterbury Rd.
Canterbury, CT 06331

Re: FOIA Appeal
Greyhound
(Amalgamated Transit Union)
Case No. 30-CA-10681-2
30-CA-10960

Dear Mr. Jenkins:

Your appeal from the Freedom of Information Officer's decision to provide certain documents you had requested in the above-captioned case has been carefully considered.

The appeal is sustained in part, and denied in part. While the information provided you on the printout by the Freedom of Information Officer may have been broader than your request, it was, nevertheless deemed responsive to your request for all unfair labor practice charges filed against Greyhound and/or the Amalgamated Transit Union pertaining to the strike which commenced on March 6, 1990. We have been advised that cases containing filing dates prior to March 6, 1990 generally were not connected to the strike, and that almost every case filed after that date was connected in some manner. Unfortunately, we cannot ascertain from a computer search complete accuracy as to whether every case filed after March 6, 1990

(page 1 cont.)

was strike related or the precise case numbers of the very few cases prior to that date that may have been related to the strike. In order to provide you with such accuracy, Regional Office personnel would have to retrieve every case file listed on the printout and read each file to ascertain the precise allegations. As you can ascertain from the printout, such a search would entail a great deal of time and Agency resources. If you believe that the information previously provided and additionally provided you with this letter is insufficient, you may file a requst with the Regional Director to conduct such a search. The Regional Director will then notify you of the cost of conducting the search and will require you to pay in advance the necessary fees.

(page 2 of letter)

However, in order to further clarify the information previously provided you by the Freedom of Information Officer, we are hereby furnishing additional documents listing the cases in the Greyhound complaint (Document "A") and pending Greyhound cases not listed in the complaint (Document "B). Certain portions of Document B have been redacted as they contained internal Agency material protected by Exemption 5 of the FOIA. By reviewing these documents with the previously furnished printout you should be able to ascertain that cases filed after March 6, 1990, and not included on either Documents A or B were either dismissed by the Regional Director or withdrawn by the charging parties.

(page 2 cont.)

Yvonne T. Dixon, at the directiion of and pursuant to the policies established by the General Counsel, Fred Feinstein, is responsible for the determination that the documents you seek are privileged from disclosure under the FOIA.

Judicial review of this determination may be obtained by filing a complaint in the District Court of the United States in the district in which the complainant resides, or in which the records are situated, or in the District of Columbia, as provided in the FOIA, 5 U.S.C. Section 552(a)(4)(B).

Sincerely,

Fred Feinstein
General Counsel

"S/"

By_____
Yvonne T. Dixon, Director
Office of Appeals

cc: Director, Region 30
FOIA Officer

(page 5, Document B) 10/20/95

PENDING GREYHOUND CASES-Not in Complaint with Regional Positions *

Case No.:	34CB01686
Name of Charging Party:	Richard Dwight Jenkins
Name of Party Charged:	ATU
Date Filed:	5/7/93
Nature of charge:	8(b)(1)(A) - Union since 4/20/93 breached its duty of fair representation by the president of the ATU negotiating a contract without proper authority; (2) ATU excluded bargaining unit employees from voting on contract.

Case No.: Transferred	36CA06794
New Case No.:	30-CA-11796
Name of Charging Party:	Local 2384 ATU
Name of Charged Party:	Greyhound
Date Filed:	3/16/92
Nature of Charge:	8(a)(1)&(3) - Since 2/17/92, GLI failed to properly reinstate strikers

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* Only page No. 5 of Document "B" is being reprinted at this time due to the large quantity of case referenced in this document. However, this is sufficient to demonstrate my "party status".

(page 5, Document B, cont.)

Case No.:	36CA07561
Name of Charging Party:	William A. Owley
Name of Charged Party:	Greyhound
Date Filed:	5/5/93
Nature of Charge:	8(a)(1)&(3) - GLI discriminated against employees who took early retirement by not including them with employees having recall rights.

Case No.:	36CA07562
Name of Charging Pasrty:	James Kurtz
Name of Charged Party:	Greyhound
Date Filed:	5/6/93
Nature of Charge:	8(a)(1)&(3) - GLI discriminated against employees who took early retirement by not including them with employees having recall rights.

Case No.:	36CB18041
Name of Charging Party:	William A Owley
Name of Charged Party:	ATU
Nature of Charge:	8(b)(1)(A)&8(b)(2) - Union failed to include retired employees in Settlement Agreement having recall rights.

APPENDIX H

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

April 18, 1996

The Honorable Nancy Pelosi
Member, U.S. House of Representatives
450 Golden Gate Avenue
San Francisco, CA 94102-3460

Re: Greyhound Lines, Inc.
Cases 30-CA-10681-2 et al.

Dear Representative Pelosi:

This is in response to your letter on behalf of your constituent, Mr. Howard C. Brown, Jr.

Beginning in 1990, a large number of unfair labor practice charges were filed concerning the negotiations for a new collective-bargaining agreement and the strike that occurred at that time alleging that Greyhound Lines, Inc. (hereinafter Greyhound) had violated the National Labor Relations Act. After a thorough investigation, it was determined that there was reason to believe that there was merit to some of the charges. An unfair labor practice complaint issued on May 30, 1990, and was amended several times thereafter.

During the course of the strike, Greyhound filed for the protection of the Bankruptcy Court, pursuant to Chapter 11 of the Bankruptcy Code. The bankruptcy proceeding, in part, involved an estimation of the value of the Board's unfair labor practice claims.

(page 1, cont.)

During early 1993, after several months of hearing, Greyhound and the Amalgamated Council of Greyhound Local Unions (the bargaining representative for striking employees) and the Amalgamated Transit Union (the parent to the Council, hereinafter with the Amalgamated Council collectively called the Union), reached a tentative settlement of their labor dispute before Administrative Law Judge Robert Giannasi. On May 9, 1994, after significant further negotiation, I authorized the settlement between the Union and Greyhound, which resolved
(end of page 1 of letter)

(beginning of page 2)
their entire dispute, except for certain issues relating to Experienced Based Seniority, a method of giving additional seniority to strike replacements and nonstrikers.

Judge Giannasi, thereafter, approved the settlement agreement. However, one of the individual Charging Parties, Mr. Richard D. Jenkins, filed exceptions with the Board to Judge Giannasi's approval of the settlement agreement. The Board affirmed Judge Giannasi's ruling. Additionally, Judge Giannasi and the Board found Expeienced Based Seniority to be unlawful discrimination. Mr. Jenkins then requested that the United States Court of Appeals for the Second Circuit review the Board's order. The court affirmed the Board's order. A request for an en banc rehearing of the court's decision was made and denied. Mr. Jenkins then filed a writ of certiorari in the Supreme Court.

(page 2, cont.)

On February 26, 1996, the Court denied the writ.

The settlement provides, inter alia, for the reinstatement of strikers pursuant to a preferential recall list and backpay for certain employees who suffered a loss of earnings as a result of their failure to be recalled by Greyhound or because of their discharge by Greyhound. At present, many strikers have been reinstated, and many others will be in the near future; however, no determination has been made of the amount of backpay owed to individuals or to which individuals such backpay is owed. For a more detailed explanation of the settlement, I am enclosing a Notice to Employees prepared by Greyhound and the Union. This notice is to be distributed by the Union to interested parties.

A Contested Claims Pool Trust under the supervision of the Bankruptcy Court, has been established to satisfy backpay claims; however, the release of the money held in the trust cannot occur, by the terms of the settlement, until 60 days after a final approval of the settlement agreement by the courts. Now that the Supreme Court has denied the Charging Party's writ, the Agency can begin the process of determining and distributing backpay to the thousands of employees who are proper backpay claimants. The determination of entitlement and backpay will be time-consuming not only because of the number of discriminatees, but also because of the complexity of the underlying Greyhound dispute.

(page 2, cont.)

Although I regret the amount of time it has taken to reach this final stage of the proceedings, the appeals to the Board and the courts were within the parties' rights to exercise. Because of the passage of time since your inquiry, I am enclosing a copy of your original correspondence for your convenience. (end of page 2)

The Honorable Nancy Pelosi
Page Three

Thank you for your inquiry. If I can be of any further assistance to you in this or any other matter, please do not hesitate to contact me.

Sincerely,

"S/_____"
Fred Feinstein
General Counsel

Enmclosures

cc: The Honorable Nancy Pelosi
House of Representatives
Washington, DC 20515-0508